

Mr. DeGeorge



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** ACM Environmental Services, Inc.

**File:** B-242064

**Date:** March 7, 1991

Channon C. Brown for the protester.  
Dennis D. Danz, Department of Agriculture, for the agency.  
Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Protester's challenge to the evaluation of its proposal is denied where it is not shown that the agency's evaluation was unreasonable or inconsistent with the evaluation criteria listed in the solicitation.
2. In a negotiated procurement the contracting agency has broad discretion in making cost/technical tradeoffs. Award to higher rated offeror with higher proposed costs is not objectionable where agency reasonably concluded that cost premium involved was justified considering the technical superiority of the selected offeror's proposal.

### DECISION

ACM Environmental Services, Inc. (ACM) protests the award of a contract to Environmental Training Consultants, Inc. under request for proposals (RFP) No. R6-15-90-139, issued by the Forest Service, Department of Agriculture, for the operation and maintenance of water treatment and wastewater treatment facilities at the Umpqua National Forest. ACM contends that the award was improper because its proposal was misevaluated by the agency and because the awardee was not the low offeror.<sup>1/</sup>

<sup>1/</sup> In its initial protest, ACM also contended that the agency did not provide the firm with an adequate opportunity to respond to questions regarding its proposal. In the report on the protest, the agency responded in detail to this contention. ACM, however, in commenting on the report, did not

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We deny the protest.

The RFP was issued on July 20, 1990, and solicited offers for the operation and maintenance of two water and wastewater treatment facilities located in the Umpqua National Forest. Proposals were to be evaluated based upon three major evaluation factors and numerous related subfactors. The major factors were assigned relative point values, out of a total of 100 points, as follows: (1) organization (30 points); (2) personnel qualifications (40 points); and (3) workplans (30 points). For purposes of award, the RFP provided that a cost/technical tradeoff would be made in order to determine which proposal "presented the most advantageous cost/technical relationship to the government." The RFP further provided that price was less important than technical considerations.

Two proposals were received by the August 21 closing date. Based upon the agency's initial evaluation, both proposals were determined to be within the competitive range and eligible for discussions. ACM's proposal was found deficient in the area of personnel qualifications. Specifically, the agency questioned whether ACM had proposed an adequate number of operators for the two facilities, and whether the firm was capable of complying with the RFP's requirement regarding operator certifications. In this regard, the RFP specified that contractor personnel operating the facilities were required to hold certain Oregon State certifications in water and wastewater treatment by the time of starting work, and hold other certifications within 12 months of starting work. ACM proposed a total of two operators and indicated that both held certifications from states other than Oregon. Because ACM's proposal did not indicate that a reciprocity agreement existed between Oregon and the states from which ACM's proposed operators held their certifications, the Forest Service was unable to determine whether the RFP's certification requirements were met by ACM. The concerns with ACM's proposal were communicated to the firm by the contracting officer in a discussion letter and request for best and final offers (BAFO).

BAFOs were submitted on September 20. After the agency's evaluation, the record shows that ACM's offer priced at \$367,718 was assigned 85 points and Environmental Training's offer of \$415,764 was assigned 100 points. ACM's technical

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attempt to address or rebut the agency's response. We therefore deem this issue abandoned. See Logitek, Inc., B-238773, July 6, 1990, 90-2 CPD ¶ 16.

proposal was downgraded primarily in the area of personnel qualifications. According to the record, this was a result of ACM's failure to satisfactorily respond to the deficiencies noted in its initial proposal regarding the number and qualifications of its proposed operators. Although in its BAFO ACM proposed an additional operator beyond the two identified in its initial proposal, the Forest Service concluded that the total number of operators proposed remained inadequate. In addition, ACM's BAFO was considered not in compliance with the RFP's operator certification requirements. In this regard, ACM's BAFO indicated that while all of the required certifications would be held by at least one operator, each of the proposed operators would not necessarily hold them all. This approach was considered by the agency to be contrary to the RFP and a significant weakness in ACM's technical proposal. Accordingly, ACM received only 34 out of a possible 40 points in the area of personnel qualifications, and 21 of 30 points in the area of organization where it was downgraded primarily under a subfactor pertaining to the proposed number of qualified operators.

Following completion of the BAFO evaluations, the Forest Service performed a cost/technical tradeoff analysis as called for by the RFP. The contracting officer determined that the Environmental Training proposal presented not only the most quality in terms of technical superiority, but also the most economical overall solution. Award was made to Environmental Training. In a letter to ACM notifying the firm of the award, the Forest Service stated that ACM's proposal had not been selected because of a lack of required operator certifications and a less than adequate number of proposed operators.

ACM contends that its proposal conformed to the requirements of the State of Oregon regarding water and wastewater treatment certifications, which in ACM's opinion should control, and that, in any event, the certifications here were not required to be held by the time of award. According to the protester, therefore, the Forest Service erred in downgrading its proposal in this area.

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. AT&T Technology Sys., B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. Thus, we will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation

criteria listed in the RFP. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD § 93. The fact that a protester may disagree with the agency will not itself render an evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD § 450.


Here, we find no basis to question the Forest Service's evaluation of ACM's proposal. There are two separate facilities to be operated under the contract. The record shows that the agency was concerned that ACM's proposal of a total of three operators for both sites would pose a risk of inadequate coverage particularly during the winter months when operating needs would be highest. Additionally, in consideration of the 80-mile distance between the two sites, the agency viewed it necessary that each proposed operator hold all of the required certifications. Because ACM's proposal was expressly limited in this respect, the agency found it to be less than adequate and equivocal regarding ACM's ability to comply with the certification requirements on the schedule called for by the RFP.

While the RFP does indicate that the operator certifications need not be held prior to award, we do not believe that the agency acted unreasonably in determining that ACM may be unable to obtain the certifications within the time periods specified. An offeror is obligated to provide the assurances and information necessary to establish that what the firm is proposing will meet the agency's requirements. See Sikora & Fogleman, B-236960, Jan. 17, 1990, 90-1 CPD § 61. Based on the record, we find that the Forest Service reasonably concluded that ACM's proposal, which did not provide that each operator would hold all of the required certificates and merely stated without explanation that these certificates would be applied for or, in the alternative certified operators hired, was lacking in this respect. To the extent that ACM argues that the RFP is inconsistent with Oregon State requirements relative to water and wastewater operator certifications, this argument is untimely. Protests against alleged solicitation improprieties must be filed prior to the closing date of the RFP. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990).

Finally, ACM contends that the award to Environmental Training was improper because the awardee was not the low offeror. As discussed above, the RFP expressly provided that award would be based upon a cost/technical tradeoff with technical considerations being more important than cost. A contracting agency has broad discretion in making cost/technical tradeoffs, the extent of which is governed only by the tests of rationality and consistency with the established evaluation

criteria. Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92. Awards are proper to technically superior, higher priced offerors where the agency has reasonably determined that the technical difference is sufficiently significant to outweigh the price difference. Suncoast Scientific, Inc., B-239614, Sept. 14, 1990, 90-2 CPD ¶ 211. Here, we find that the record supports the Forest Service's determination that the relative technical merit of the awardee's proposal outweighed its higher cost. Thus, we have no basis to object to the award decision.

The protest is denied.

  
for James F. Hinchman  
General Counsel